

REMARKS/ARGUMENTS

Status of the claims

With entry of the instant amendment, claim 17 has been amended. The amendment to the claim adds no new matter and corrects a formality.

Claim 17 is under examination.

Claims 18, 19, 20, and 22 are withdrawn by the Examiner.

Applicant thanks the Examiner for the interview on November 13, 2008 in which the rejection under 35 U.S.C. § 102(e) was discussed and a potential obviousness-type double-patenting issue was raised by the Examiner. It is noted that Applicants do not necessarily agree with the Examiner regarding potential obviousness-type double patenting over U.S. Patent No. 6,953,837.

Objection to the claims

The objection to claim 17 has been addressed by amending the claim as suggested by the Examiner. Applicants therefore respectfully request withdrawal of the objection.

Rejection under 35 U.S.C. § 102(e)

Claim 17 is rejected to as allegedly anticipated by Mitterer *et al.*, U.S. Patent No. 6,953,837 (“the ‘837 patent”). As explained in the interview with the Examiner, U.S. patent application no. 10/003,621 (“the ‘621 application”), which issued as the ‘837 patent, is a sister divisional application of the current application. Both applications claim priority to U.S. application no. 09/367,459, now U.S. Patent No. 6,831,159, which in turn claims priority to PCT application PCT/AT98/00043, which claims priority to Austrian application no. A 338/97. A certified copy of the Austrian priority document was filed with the USPTO on May 14, 2004 during prosecution of the ‘621 application. The Examiner has acknowledged the filing of the certified copy of the priority document in the Interview Summary and indicated that the 35 U.S.C. § 102(e) rejection would be withdrawn.

Appl. No. 10/789,562
Amdt. dated November 24, 2008
Reply to Office Action of June 23, 2008

PATENT

Rejoinder

Applicants respectfully request rejoinder of the composition claims 18-20 and of method claim 22, as these claims depend from claim 17, or otherwise include all of the elements of claim 17.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

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